

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-1793-PST-E TCEQ ID: RN101791770 CASE NO.: 34905
RESPONDENT NAME: HIEN HUYNH DBA QUICK FOOD STORE 9

Page 1 of 2

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: 204 East Little York Road, Houston, Harris County</p> <p>TYPE OF OPERATION: convenience store with retail sales of gasoline.</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired April 20, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Ms. Anna M. Cox, Litigation Division, MC 175, (512) 239-0974 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019 TCEQ Enforcement Coordinator: Ms. Elvia Maske, Waste Enforcement Section, MC 128, (512) 239-0789 TCEQ Regional Contact: Ms. Nicole Bealle, Houston Regional Office, MC R-12, (713) 767-3623 Respondent: Mr. Hien Huynh, Owner, Quick Food Store 9, 17415 Arbor Spring Court, Spring, Texas 77379 Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: October 2, 2007</p> <p>Date of NOE Relating to this Case: October 9, 2007</p> <p>Background Facts: The EDPRP was filed June 11, 2008. The Litigation Division ("LD") sent an Agreed Order to the Respondent September 24, 2008, however, the Respondent failed to sign and return the Order. On January 27, 2009, LD notified the Respondent of the ED's intent to enter a default order. In response, the Respondent returned the Agreed Order, which was dated September 30, 2008. The Agreed Order was received by LD on February 4, 2009.</p> <p>Current Compliance Status: No outstanding Technical Requirements.</p> <p>PST:</p> <p>1. Failed to upgrade the Stage II equipment to onboard refueling vapor recovery ("ORVR") compatible systems and failed to maintain the Stage II vapor recovery system in proper operation condition, as specified by the manufacturer and/or any applicable California Air Resource Board Executive Order, and free of defects that would impair the effectiveness of the system [TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE §§ 115.242(1)(C), (3) and (3)(A)].</p> <p>2. Failed to verify proper operation of the Stage II equipment at least once every twelve months or upon major system replacement or modification, whichever occurs first [TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE § 115.245(2)].</p>	<p>Total Assessed: \$4,500</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid/Due to General Revenue: \$300/\$4,200</p> <p>The Respondent paid \$300 of the administrative penalty. The remaining amount of \$4,200 of the administrative penalty shall be payable in 35 monthly payments of \$120 each.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent implemented the following corrective measures:</p> <p>1. Installed swivel adaptors, bar caps, and drop tubes on October 12, 2007.</p> <p>2. Conducted annual testing on the Stage II system on November 6, 2007.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision November 6, 2007

TCEQ

DATES	Assigned	29-Oct-2007	Screening	29-Oct-2007	EPA Due	
	PCW	23-Jul-2008				

RESPONDENT/FACILITY INFORMATION

Respondent	Hien Huynh dba Quick Food Store 9		
Reg. Ent. Ref. No.	RN101791770		
Facility/Site Region	12-Houston	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	34905	No. of Violations	2
Docket No.	2007-1793-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Elvia Maske
Multi-Media		EC's Team	Enforcement Team 6
Admin. Penalty \$	Limit Minimum	\$0	Maximum
			\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$3,500**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History **10% Enhancement** **Subtotals 2, 3, & 7** **\$350**

Notes Enhancement for two Notice of Violations with same or similar violations.

Culpability **No** **0% Enhancement** **Subtotal 4** **\$0**

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply **10% Reduction** **Subtotal 5** **\$350**

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary	
Ordinary	X
N/A	(mark with x)

Notes The Respondent achieved complete compliance on November 6, 2007.

Total EB Amounts **\$1,098**
Approx. Cost of Compliance **\$2,200**

0% Enhancement*
 *Capped at the Total EB \$ Amount

Subtotal 6 **\$0**

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$3,500**

OTHER FACTORS AS JUSTICE MAY REQUIRE **29%** **Adjustment** **\$1,000**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes Recommended enhancement to capture avoided costs associated with Violation No. 2.

Final Penalty Amount **\$4,500**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$4,500**

DEFERRAL **0%** **Reduction** **Adjustment** **\$0**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes Deferral not offered for non-expedited settlement.

PAYABLE PENALTY **\$4,500**

Screening Date 29-Oct-2007

Docket No. 2007-1793-PST-E

PCW

Respondent Hien Huynh dba Quick Food Store 9

Policy Revision 2 (September 2002)

Case ID No. 34905

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN101791770

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	2	10%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 10%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for two Notice of Violations with same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 10%

Screening Date 29-Oct-2007		Docket No. 2007-1793-PST-E		PCW
Respondent Hien Huyhn dba Quick Food Store 9		<small>Policy Revision 2 (September 2002)</small>		
Case ID No. 34905		<small>PCW Revision November 6, 2007</small>		
Reg. Ent. Reference No. RN101791770				
Media [Statute] Petroleum Storage Tank				
Enf. Coordinator Elvia Maske				
Violation Number		<div style="border: 1px solid black; padding: 2px; text-align: center;">1</div>		
Rule Cite(s)		<div style="border: 1px solid black; padding: 2px;">30 Tex. Admin. Code § 115.242(1)(C), 115.242(3) and (3)(A), and Tex. Health & Safety Code § 382.085(b)</div>		
Violation Description		<div style="border: 1px solid black; padding: 5px;">Failed to upgrade the Stage II equipment to onboard refueling vapor recovery ("ORVR") compatible systems. Also, failed to maintain the Stage II vapor recovery system in proper operation condition, as specified by the manufacturer and/or any applicable California Air Resource Board Executive Order, and free of defects that would impair the effectiveness of the sytem. Specifically, swivel adapters were not installed on the dry breaks, and the drop tubes had nonapproved holes drilled into them.</div>		
Base Penalty				<div style="border: 1px solid black; padding: 2px; text-align: center;">\$10,000</div>
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>
	Potential	<div style="border: 1px solid black; width: 40px; height: 15px; text-align: center;">x</div>	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>
Percent				<div style="border: 1px solid black; padding: 2px; text-align: center;">10%</div>
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>
Percent				<div style="border: 1px solid black; padding: 2px; text-align: center;">0%</div>
Matrix Notes		<div style="border: 1px solid black; padding: 5px;">Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.</div>		
Adjustment				<div style="border: 1px solid black; padding: 2px; text-align: center;">\$9,000</div>
				<div style="border: 1px solid black; padding: 2px; text-align: center;">\$1,000</div>
Violation Events				
Number of Violation Events		<div style="border: 1px solid black; padding: 2px; text-align: center;">1</div>	Number of violation days	
		<div style="border: 1px solid black; padding: 2px; text-align: center;">10</div>		
<small>mark only one with an x</small>	daily	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	Violation Base Penalty <div style="border: 1px solid black; padding: 2px; text-align: center;">\$1,000</div>	
	monthly	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>		
	quarterly	<div style="border: 1px solid black; width: 40px; height: 15px; text-align: center;">x</div>		
	semiannual	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>		
	annual	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>		
	single event	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>		
One quarterly event is recommended from the October 2, 2007 investigation date to the October 12, 2007 compliance date.				
Economic Benefit (EB) for this violation				
Estimated EB Amount		<div style="border: 1px solid black; padding: 2px; text-align: center;">\$2</div>	Statutory Limit Test	
			Violation Final Penalty Total <div style="border: 1px solid black; padding: 2px; text-align: center;">\$1,286</div>	
This violation Final Assessed Penalty (adjusted for limits)				<div style="border: 1px solid black; padding: 2px; text-align: center;">\$1,286</div>

Economic Benefit Worksheet**Respondent:** Hien Huynh dba Quick Food Store 9**Case ID No.:** 34905**Reg. Ent. Reference No.:** RN101791770**Media:** Petroleum Storage Tank**Violation No.:** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$1,200	2-Oct-2007	12-Oct-2007	0.0	\$2	n/a	\$2

Notes for DELAYED costs

Approximate cost to upgrade the Stage II equipment to ORVR compatible systems, install swivel adapters, and replace the drop tubes. The Date Required is the date of the investigation. The Final Date is the date of compliance.

Avoided Costs**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs**Approx. Cost of Compliance**

\$1,200

TOTAL

\$2

Screening Date 29-Oct-2007

Docket No. 2007-1793-PST-E

PCW

Respondent Hien Huynh dba Quick Food Store 9

Policy Revision 2 (September 2002)

Case ID No. 34905

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN101791770

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 115.245(2) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to verify proper operation of the Stage II equipment at least once every twelve months or upon major system replacement or modification, whichever occurs first. Specifically, the Stage II annual system compliance testing had not been conducted.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				25%
	Potential	x			

>> Programmatic Matrix

OR	Falsification	Harm			Percent
		Major	Moderate	Minor	
					0%

Matrix Notes Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 365 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	x
	single event	

Violation Base Penalty \$2,500

One annual event is recommended for the 12-month period preceding the October 2, 2007 investigation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,096

Violation Final Penalty Total \$3,214

This violation Final Assessed Penalty (adjusted for limits) \$3,214

Economic Benefit Worksheet**Respondent** Hien Huynh dba Quick Food Store 9**Case ID No.** 34905**Reg. Ent. Reference No.** RN101791770**Media** Petroleum Storage Tank**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs**Avoided Costs****ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$1,000	2-Oct-2006	2-Oct-2007	1.9	\$96	\$1,000	\$1,096
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approximate cost for testing to verify proper operation of the Stage II equipment. The Date Required is one year prior to the investigation. The Final Date is the date of the investigation.

Approx. Cost of Compliance

\$1,000

TOTAL

\$1,096

Compliance History

Customer/Respondent/Owner-Operator:	CN600970644	Huynh, Hien	Classification: AVERAGE	Rating: 4.00
Regulated Entity:	RN101791770	QUICK FOOD STORE 9	Classification: AVERAGE	Site Rating: 4.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		REGISTRATION	63984
Location:	204 E LITTLE YORK RD, HOUSTON, TX, 77076		Rating Date: 9/1/2007 Repeat Violator: NO	
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	November 12, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	November 12, 2002 to November 12, 2007			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Shontay Wilcher Phone: (512) 239-2136

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

- 1 04/15/2007 (556195)
- 2 07/16/2007 (567535)
- 3 10/09/2007 (596743)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 04/15/2007 (556195)

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.246(6)

Description: 30 Tex. Admin. Code Section 115.246 (6) - Failure to maintain a record of the results of the daily inspections conducted at the motor vehicle fuel dispensing facility in accordance with the provisions specified in § 115.244 of this title (relating to Inspection Requirements).

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.246(4)

Description: 30 Tex. Admin. Code Section 115.246 (4) - Failure to maintain proof of attendance and completion of the training specified in §115.248 of this title (relating to Training Requirements), with the documentation of all Stage II training for each employee to be maintained as long as that employee continues to work at the f

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)

Description: 30 Tex. Admin. Code Section 115.242 (3)(G) - Failure to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order(s), and free of defects that would impair the effectiveness of the system, including vapor return lines, includin

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)

Description: Tex. Admin. Code Section 115.245 (2)- Failure to verify proper operation of the

Stage II equipment at least once every twelve months or upon major system replacement or modification, whichever occurs first. The verification shall include all functional tests that were required for the initial system test, except for TX

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 115, SubChapter C 115.242(1)(C)
Description: Please note that 30 TAC Chapter 115.242(1)(C) requires that all Stage II Vapor Recovery systems to be compatible with Onboard Refueling Vapor Recovery (ORVR) systems on motor vehicles. Existing Stage II systems must be in compliance with this requirement. The current vapor vac system installed at the facility is not OR

Date: 07/16/2007 (567535)

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 115, SubChapter C 115.246(6)
Description: 30 Tex. Admin. Code Section 115.246 (6) - Failure to maintain a record of the results of the daily inspections conducted at the motor vehicle fuel dispensing facility in accordance with the provisions specified in § 115.244 of this title (relating to Inspection Requirements).

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 115, SubChapter C 115.246(4)
Description: 30 Tex. Admin. Code Section 115.246 (4) - Failure to maintain proof of attendance and completion of the training specified in §115.248 of this title (relating to Training Requirements), with the documentation of all Stage II training for each employee to be maintained as long as that employee continues to work at the f

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(A)
Description: "CORRECT RULE CITED"
30 Tex. Admin. Code Section 115.242 (3) - Failure to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order(s), and free of defects that would impair the effectiveness of the system.
***** The drop tubes at this facility had holes drilled in them which is not approved and will not allow the 102.1 Pressure Decay Test to pass.

- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.
N/A
- I. Participation in a voluntary pollution reduction program.
N/A
- J. Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
HIEN HUYNH DBA QUICK FOOD
STORE 9
RN101791770

§
§
§
§
§
§

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2007-1793-PST-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Hien Huynh dba Quick Food Store 9 ("Mr. Huynh") under the authority of TEX. WATER CODE chs. 7 and 26, and TEX. HEALTH & SAFETY CODE ch. 382. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. Huynh, appear before the Commission and together stipulate that:

1. Mr. Huynh owns and operates a convenience store with retail sales of gasoline located at 204 East Little York Road, Houston, Harris County, Texas (the "Station").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26, TEX. HEALTH & SAFETY CODE ch. 382, and TCEQ rules.
3. The Commission and Mr. Huynh agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Huynh is subject to the Commission's jurisdiction.
4. Mr. Huynh received notice of the violations alleged in Section II ("Allegations") on or about October 14, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Huynh of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of four thousand five hundred dollars (\$4,500.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Huynh has paid three hundred dollars (\$300.00) of the administrative penalty. The remaining amount of four thousand two hundred dollars (\$4,200.00) of the administrative penalty shall be payable in 35 monthly payments of one hundred twenty dollars (\$120.00) each, pursuant to 30 TEX. ADMIN. CODE § 70.9(a). The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Mr. Huynh fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Mr. Huynh's failure to meet the payment schedule of this Agreed Order constitutes the failure by Mr. Huynh to timely and satisfactorily comply with all of the terms of this Agreed Order.
7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Mr. Huynh have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that Mr. Huynh has implemented the following corrective measures at the Station in response to this enforcement action:
 - a. Had swivel adaptors, bar caps, and drop tubes installed on October 12, 2007; and
 - b. Had Stage II annual system compliance testing conducted on November 6, 2007.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Mr. Huynh has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

Mr. Huynh is alleged to have violated:

1. TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE §§ 115.242(1)(C), 115.242(3) and (3)(A) by failing to upgrade the Stage II equipment to onboard refueling vapor recovery ("ORVR") compatible systems and failing to maintain the Stage II vapor recovery system in proper operation condition, as specified by the manufacturer and/or any applicable California Air Resource Board Executive Order, and free of defects that would impair the effectiveness of the system. Specifically, TCEQ Local Program, University of Texas – Arlington Stage II Petroleum Storage Tank investigator documented the swivel adaptors were not installed on the dry breaks and the drop tubes had nonapproved holes drilled into them during an investigation conducted on October 2, 2007.
2. TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE § 115.245(2) by failing to verify proper operation of the Stage II equipment at least once every twelve months or upon major system replacement or modification, whichever occurs first. Specifically, TCEQ Local Program, University of Texas – Arlington Stage II Petroleum Storage Tank investigator documented the Stage II annual compliance testing had not been conducted during an investigation conducted on October 2, 2007.

III. DENIALS

Mr. Huynh generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Huynh pay an administrative penalty as set forth in Section I, Paragraph 6, above. The payment of this administrative penalty and Mr. Huynh's compliance with all the terms and conditions set forth in this Agreed Order resolve only the Allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Hien Huynh dba Quick Food Store 9, Docket No. 2007-1793-PST-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon Mr. Huynh.
3. If Mr. Huynh fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Huynh's failure to comply is not a violation of this Agreed Order. Mr. Huynh shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Huynh shall notify the Executive Director within seven days after Mr. Huynh becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Huynh shall be made in writing to the Executive Director. Extensions are not effective until Mr. Huynh receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Huynh in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
6. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
7. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T. CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Mr. Huynh, or three days after the date on which the Commission mails notice of the Order to Mr. Huynh, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

April 1, 2009

Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

In addition, I understand that any falsification of any compliance documents may result in criminal prosecution



Signature

9/30/08

Date

Hien Huynh

Name (Printed or typed)
Authorized representative of
Hien Huynh dba Quick Food Store 9

Owner

Title